

P-3010/NA-89-197 GRANTING AUTHORITY TO RESELL INTRASTATE TOLL TELEPHONE SERVICES, GRANTING INTERIM AUTHORITY TO PROVIDE ALTERNATIVE OPERATOR SERVICES, DEFERRING ACTION ON REQUEST FOR AUTHORITY TO PROVIDE ALTERNATIVE OPERATOR SERVICES, AND REQUIRING REFUND

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of an Application Filed by U.S. Operators, Inc. d/b/a USO, Inc. for Authority to Resell Intrastate Toll Telephone Services Including Operator Services; and for Interim Authority to Provide Alternative Operator Services

ISSUE DATE: March 6, 1990

DOCKET NO. P-3010/NA-89-197

ORDER GRANTING AUTHORITY TO RESELL INTRASTATE TOLL TELEPHONE SERVICES, GRANTING INTERIM AUTHORITY TO PROVIDE ALTERNATIVE OPERATOR SERVICES, DEFERRING ACTION ON REQUEST FOR AUTHORITY TO PROVIDE ALTERNATIVE OPERATOR SERVICES, AND REQUIRING REFUND

PROCEDURAL HISTORY

On April 3, 1989, U.S. Operators, Inc. (USO or the Company) filed a petition requesting authority from the Commission to do three things in Minnesota: resell toll telephone service; provide alternative operator services (AOS); gain interim authority to provide AOS pending conclusion of the AOS contested case proceeding.

Intrastate Toll Telephone Service

USO is proposing to provide 24-hour long distance telephone service over leased facilities in Minnesota. The Company has submitted a proposed tariff and financial, technical and managerial data to the Commission.

In an informational filing submitted to the Department of Public Service (the Department) in August of 1989, USO revealed that it had been providing intrastate service in Minnesota since January 1, 1989. The Company provided information on the amount of revenues it had earned through this pre-certification service. Since the August filing, USO has corrected the problem by providing its customers with a programmable dialing device to prevent intrastate traffic routing to USO.

AOS Authority

The Company is also applying for authority to provide alternative operator services in Minnesota. AOS is the provision of long distance operator services accessed by dialing "O" and designed for hotels, hospitals and similar locations with transient end-users.

AOS is currently the subject of contested case proceedings. In Docket No. P-999/CI-88-917, the Commission has been considering whether AOS is in the public interest, whether it should be classified as emergingly competitive under Minn. Stat. §237.59, subd. 5 (1988), and whether it should be rate-regulated. On January 12, 1990, the Commission issued its ORDER MODIFYING PROPOSED STIPULATION OF SETTLEMENT AND ADOPTING STIPULATION OF SETTLEMENT AS MODIFIED in the AOS Docket. That Order approved the offering of AOS in Minnesota, provided certain consumer protections were addressed by AOS providers. Petitions for reconsideration have been filed by some parties to the AOS proceeding.

Interim Authority for AOS

USO has also petitioned the Commission for interim authority to provide alternative operator service pending conclusion of the AOS contested case proceedings.

Department Recommendation

The Department of Public Service recommended approval of USO's application to provide long distance service. The Department further recommended approval of USO's request for interim authority subject to the Company's filing of revised form contracts prohibiting the imposition of surcharges by customers. Finally, the Department recommended that USO be required to refund its pre-certification revenues, and that the issue of permanent authority to provide AOS be deferred pending the Commission's final determination in the contested case proceeding.

FINDINGS AND CONCLUSIONS

Intrastate Toll Telephone Service

The Commission finds that USO has made the requisite showing of legal, technical and financial capability to resell intrastate toll telephone services in Minnesota. The Company has been providing domestic long distance services since 1987. It is currently providing long distance services in a number of other states including Texas, California, Maryland and New York. The Commission will follow the Department's recommendation that USO's application to resell intrastate toll telephone service be approved.

Under the terms of Minn. Stat. §237.16, subd. 4 (1988), no company shall operate any line, plant or system without first obtaining Commission certification that present or future public convenience and necessity require or will require such operation. Because USO earned revenues by providing intrastate toll telephone service in Minnesota prior to its certification, USO should provide refunds

to its affected end-users.

AOS, however, provides a set of facts unique to refund issues. The end-users of AOS service are transients placing calls from hotels, hospitals, and similar locations. In some cases it may be very difficult to track down such individuals to provide them with refunds. Because of this circumstance, the Department recommended that the Company refund each overcollection to the government of the county in which the call originated. The Commission agrees with the Department's recommendation, and will require the Company to work with Commission staff to implement this refund method.

AOS Authority

Because there is currently a contested case proceeding regarding AOS in Minnesota, it is premature to approve the Company's application for AOS authority. The Commission notes that under the terms of its January 12, 1990 AOS Order, AOS applicants currently operating under interim authority may be granted permanent authority upon submission of satisfactory compliance filings with the DPS. Because in the present Order USO is being granted interim authority to provide AOS, it may also apply for permanent authority pending the Commission's final determination in Docket No. P-999/CI-88-917.

Interim Authority for AOS

The Commission has previously listed concerns which must be addressed when determining the propriety of interim AOS authority. In its December 23, 1988 ORDER AFTER RECONSIDERATION GRANTING INTERIM AUTHORITY TO TELECONNECT COMPANY TO PROVIDE OPERATOR SERVICES, Docket Nos. P-485/NA-88-291, P-478/M-88-359, P-999/CI-88-917, the Commission cited the following issues: customer access to the provider of operator services; adequate notice to customers regarding price and alternative service providers; quality of service; procedures for handling emergency calls; billing and collection procedures; procedures for handling customer complaints and refunds; and compliance with statutory requirements regarding maintaining an office in this state.

The Commission has also established fourteen filing requirements for applicants seeking authority to resell intrastate long distance service. The list of filing requirements is found in the Commission's July 13, 1983 ORDER ESTABLISHING RESELLER APPLICATION REQUIREMENTS, Docket Nos. P-421/CI-82-619, P-421/M-82-512, P-421/M-83-127.

The Commission finds that the public interest would be adequately protected by granting interim AOS authority pending the Commission's final determination in the AOS contested case proceeding. The issues raised in the Commission's aforementioned December 23, 1988 Order have been satisfactorily answered in the Company's informational filings. The Company has demonstrated willingness to comply with any consumer protections imposed by the Commission. USO is an experienced AOS provider with a successful history of service in other states.

A concern remains regarding surcharges. The Department has recommended that USO's proposed contracts with subscribers be revised to prohibit the imposition of surcharges over and beyond the tariffed rates for intrastate calls. The Commission finds that this is an appropriate consumer safeguard, and will order such a prohibition.

Contested Case Proceeding

The Commission notes that under the terms of its January 12, 1990 AOS Order, AOS applicants currently operating under interim authority may be granted permanent authority upon submission of satisfactory compliance filings with the DPS. Because the Company is herewith being granted interim authority to provide AOS, it may also apply for permanent authority pending the Commission's final determination in Docket No. P-999/CI-88-917.

ORDER

1. The application of U.S. Operators, Inc. for authority to resell toll telephone services in Minnesota is hereby approved pursuant to Minn. Stat. §237.16, subd. 4 (1988).
2. The application of U.S. Operators, Inc. for permanent authority to provide alternative operator services within Minnesota is deferred pending the Commission's final determination in In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, Docket No. P-999/CI-88-917.
3. U.S. Operators, Inc. is granted interim authority to provide alternative operator services to customers using telephones in hotels, motels, hospitals and similar locations pending the final determination in the above-entitled contested case proceeding, subject to prior Commission approval of form contracts with subscribers prohibiting the imposition by subscribers of surcharges on intrastate calls.
4. Within 30 days of the issue date of this Order, U.S. Operators, Inc. shall submit a plan for refunding pre-certification revenue pursuant to this Order.

5. The Department of Public Service shall monitor the provision of alternative operator services by U.S. Operators, Inc. and shall promptly report to the Commission any violation of the terms of this Order.
6. This grant of interim alternative operator authority may be revoked at any time upon a Commission finding that the Company has violated any of the terms of this Order.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

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